

¹ In their pleadings, the parties have used headings containing the names of several different respondents and insurance carriers. The Board has chosen to use the same parties denoted in the Division of Workers Compensation Notice of Hearing dated August 17, 2011.

ISSUES

This is a claim for a December 13, 2010, accident. Claimant sustained an injury to his right ring finger. In the November 19, 2012, Award, ALJ Fuller averaged the functional impairment ratings of Drs. C. Reiff Brown (53%) and Guillermo Garcia (10%) and awarded claimant permanent partial disability benefits based upon a 31.5% functional impairment for the right ring finger.

Claimant asserts Dr. Brown's rating best represents claimant's functional impairment and, therefore, his permanent partial disability benefits should be based upon that rating. Claimant requests the Board modify ALJ Fuller's Award accordingly.

Respondent maintains Dr. Garcia's rating is more credible and should be the basis of claimant's award of permanent partial disability benefits. In the alternative, respondent requests the Board affirm the Award.

The issue before the Board on this appeal is: what is claimant's functional impairment?

FINDINGS OF FACT

After reviewing the entire record and considering the parties' briefs, the Board finds:

The Board incorporates by reference ALJ Fuller's Findings of Fact No. 1, with the exception of the last paragraph.

Claimant sustained an injury to the ring finger on his right hand on December 13, 2010. Respondent stipulated claimant sustained a right ring finger injury by accident that arose out of and in the course of his employment. The parties stipulated to the medical records of Drs. Guillermo Garcia and C. Reiff Brown. Dr. Brown's Independent Medical Evaluation report, dated March 14, 2012, indicated claimant used his right hand to make forceful cuts and in the course of that work activity developed pain and swelling in the right hand and ring finger.

Dr. Garcia provided treatment for claimant's right ring finger from March 24, 2011, through January 26, 2012. Dr. Garcia performed an excision of the A1 pulley of the fourth digit to relieve the tenosynovitis. On January 26, 2012, Dr. Garcia opined, based upon the *Guides*,² that claimant had a 10% disability to the fourth digit on the right hand and 3% to the right hand. No further explanation was given. Dr. Garcia did not recommend any

² American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

further treatment, gave claimant no permanent restriction to use any hooks or knives, and allowed claimant to return to full duty.

Using Tables 19, 21 and 23 on pages 32, 33 and 34 of the *Guides*, Dr. Brown found claimant had a 21% functional impairment of the fourth digit due to restricted movement at the MP joint. He then determined claimant had a 29% functional impairment of the fourth digit due to restricted movement at the PIP joint and 21% as a result of restricted movement at the DIP joint. The foregoing functional impairments combine for a 53% disability to the fourth digit on the right hand. The 53% functional impairment of the fourth digit converts to a 5% functional impairment of the right hand. Dr. Brown indicated claimant should avoid work that involves frequent firm grasp activity. It was also noted by Dr. Brown that claimant's fourth digit had a severe loss of dexterity. Dr. Brown did not recommend any additional medical treatment.

PRINCIPLES OF LAW AND ANALYSIS

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.³ "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."⁴

Claimant argues Dr. Brown's opinion on functional impairment should be adopted as it takes into consideration the fact claimant has a loss of dexterity in the injured digit and there is a possible need for additional surgery. However, there is nothing in the record to indicate that Drs. Garcia or Brown indicated a possible need of additional surgery. Respondent asks the Board to adopt Dr. Garcia's functional impairment rating because Dr. Brown's functional impairment rating is inflated. The Board concurs with ALJ Fuller's finding that the opinions of both physicians are credible. The Board agrees with ALJ Fuller's decision to give equal weight to the functional impairment opinions of Drs. Garcia and Brown.

CONCLUSION

Claimant sustained a 31.5% functional impairment to the fourth digit of his right hand.

³ K.S.A. 2010 Supp. 44-501(a).

⁴ K.S.A. 2010 Supp. 44-508(g).

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁵ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board affirms the November 19, 2012, Award entered by ALJ Fuller.

IT IS SO ORDERED.

Dated this ____ day of May, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Pamela J. Fuller, Administrative Law Judge

⁵ K.S.A. 2012 Supp. 44-555c(k).